

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
SERGIO ZAVALA-CERVANTEZ,  
Defendant.

NO. CR-06-0016-RHW

**ORDER DISMISSING  
DEFENDANT'S MOTION FOR  
DOWNWARD DEPARTURE**

Before the Court is Defendant's *pro se* Motion for Downward Departure (ECF No. 104). Defendant was sentenced on January 25, 2008, to 143 months of imprisonment and a four year term of supervised release. Defendant appealed his sentence, which was affirmed by the Ninth Circuit Court of Appeals.

Defendant filed a Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence, which was denied on May 28, 2010. This Court and the Ninth Circuit Court of Appeals declined to issue a Certificate of Appealability.

In August, 2010, Defendant filed a Motion Under Rule 60(b). The Court denied the motion. Defendant now moves for a Motion for Downward Departure, asking that the Court reconsider the sentence imposed and resentence based on a downward departure for voluntary deportation.

A court generally may not correct or modify a sentence of imprisonment once it has been imposed. 18 U.S.C. § 3582(c); *United States v. Aguilar-Reyes*, 653 F.3d 1053, 1055 (9<sup>th</sup> Cir. 2011). In *Aruilar-Reyes*, the Circuit restated this rule

**ORDER DISMISSING DEFENDANT'S MOTION FOR DOWNWARD  
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1 and held that the fourteen day provision in Rule 35(a) is jurisdictional. *Id.* at 1056.  
2 The Court does not have jurisdiction to hear Defendant's motion.

3 Accordingly, **IT IS HEREBY ORDERED:**

4 1. Defendant's Motion for Downward Departure (ECF No. 104) is  
5 **DISMISSED.**

6 2. The Court declines to issue a Certificate of Appealability.

7 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
8 Order and forward a copy to Defendant.

9 **DATED** this 15<sup>th</sup> day of November, 2011.

10  
11 *s/Robert H. Whaley*

12 ROBERT H. WHALEY  
13 United States District Court  
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